

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Chairman;
Mark Acton, Vice Chairman;
Tony Hammond; and
Nanci E. Langley

Market Dominant Product Prices
Inbound Market Dominant PRIME Tracked
Service Agreement
Negotiated Service Agreements

Docket No. MC2017-71

Market Dominant Product Prices
Inbound Market Dominant PRIME Tracked
Service Agreement (MC2017-71)
Negotiated Service Agreement

Docket No. R2017-3

ORDER ADDING INBOUND PRIME TRACKED SERVICE AGREEMENT
TO MARKET DOMINANT PRODUCT LIST

(Issued January 17, 2017)

I. INTRODUCTION

On December 23, 2016, the Postal Service filed a request to add Inbound Market Dominant PRIME Tracked Service Agreement (PRIME Tracked Service Agreement) to the market dominant product list, effective February 1, 2017, along with a notice of a

Type 2 rate adjustment.¹ For the reasons provided below, the Commission approves the Postal Service's request and related Type 2 rate adjustment.

II. BACKGROUND

On December 23, 2016, the Postal Service filed its Request pursuant to statutory and regulatory filing requirements.² On December 27, 2016, the Commission provided public notice of the Postal Service's filing, established the instant dockets for consideration of the filing's consistency with applicable statutory requirements and Commission regulations; appointed a Public Representative; and provided an opportunity to comment.³ On January 4, 2017, Chairman's Information Request No. 1 was issued to clarify the Postal Service's Request.⁴ The Postal Service responded to CHIR No. 1 on January 10, 2017.⁵

III. POSTAL SERVICE REQUEST

Contents. The Request addresses the proposed addition of the PRIME Tracked Service Agreement to the market dominant product list. It also includes a notice of a Type 2 rate adjustment, a supporting statement, redacted and unredacted copies of the PRIME Tracked Service Agreement, proposed Mail Classification Schedule language,

¹ Request of United States Postal Service to Add Inbound Market Dominant PRIME Tracked Service Agreement to the Market Dominant Product List, Notice of Type 2 Rate Adjustment, and Application for Non-Public Treatment, December 23, 2016, at 1, 4 (Request).

² The controlling statutory provisions are 39 U.S.C. §§ 3622(c)(10) and 3642; the controlling regulations are 39 C.F.R. §§ 3010.40 *et seq.* and 3020.30 *et seq.*

³ See Docket No. CP2016-25, *et al.*, Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings, December 27, 2016.

⁴ Chairman's Information Request No. 1 and Notice of Filing Under Seal, January 4, 2017 (CHIR No. 1).

⁵ Response of the United States Postal Service to Chairman's Information Request No. 1, with Portions Filed Under Seal, January 10, 2017 (Response to CHIR No. 1). The Postal Service also filed a motion for late acceptance of its response. Motion for Late Acceptance of Response of the United States Postal Service to Chairman's Information Request No. 1, with Portions Filed Under Seal, January 10, 2017 (Motion). The Motion is granted.

redacted and unredacted versions of supporting financial documentation, and an application for non-public treatment of unredacted materials. Request at 3.

The PRIME Tracked Service Agreement is a multilateral agreement between postal operators concerning the exchange of Letter Post items weighing up to two kilograms, tendered as PRIME Tracked items and branded with a common logo. *Id.* at 1; *id.* Attachment 2 at 1. The purpose of the PRIME Tracked Service Agreement is to upgrade the service of the postal operators to the benefit of their customers by setting forth terms and conditions for parties to the agreement “to remunerate each other for the timely return of scans with an enhanced payment that will be due in addition to the basic payment they have agreed per each item.” Request at 2, 5; *id.* Attachment 2 at 1.

The Postal Service acceded to the PRIME Tracked Service Agreement on December 21, 2016. Request at 2; *id.* Attachment 2 at 18. The agreement enters into force on February 1, 2017, and the intended effective date of the Postal Service’s entry into the agreement is on or after February 1, 2017, subject to the conditions set forth in Annex 7 of the agreement.⁶

Request to add Inbound Market Dominant PRIME Tracked Service Agreement. The Postal Service asserts that the PRIME Tracked Service Agreement meets the applicable statutory criteria for adding a market dominant product to the market dominant product list. The Postal Service states that the Commission has already assigned inbound single-piece Letter Post to the market dominant product list.⁷ The Postal Service states that the agreement concerns the delivery of Inbound Letter Post items that weigh up to two kilograms tendered as PRIME Tracked items and branded with a common logo. Request at 11. The Postal Service observes that the Commission

⁶ Request at 4; *id.* Attachment 2 at 16-17. The Postal Service filed its Request on December 23, 2016, 40 calendar days prior to the intended implementation date of February 1, 2017. The Postal Service is reminded that it is required to transmit notice to the Commission no later than 45 calendar days prior to the intended implementation date of a negotiated service agreement (NSA). See 39 C.F.R. § 3010.41.

⁷ Request at 11 (citing Docket No. RM2007-1, Order Establishing Ratemaking Regulations for Market Dominant and Competitive Products, October 29, 2007, at 99-100 (Order No. 43)).

determined that a similar multilateral agreement, Inbound Market Dominant Express Service Agreement 1, which concerned the delivery of Inbound Letter Post items that weigh up to two kilograms tendered as Express items and branded with a common logo, satisfied the statutory criteria to be placed on the market dominant product list. *Id.* at 11-12. In accordance with 39 C.F.R. § 3020.32, the Postal Service included a statement of supporting justification as Attachment 1 to the Request.

Type 2 rate adjustment. The Postal Service asserts that the PRIME Tracked Service Agreement meets the applicable statutory criteria for market dominant NSAs, which are: (1) improve the net financial position of the Postal Service or enhance the performance of operational functions; (2) do not cause unreasonable harm to the marketplace; and (3) be available on public and reasonable terms to similarly situated mailers. *Id.* at 9; see 39 U.S.C. § 3622(c)(10).

With respect to the first criterion, the Postal Service represents that it provides information in its workpapers showing the PRIME Tracked Service Agreement's expected financial improvements over Universal Postal Union (UPU) default rates. Request at 6. The Postal Service also identifies improvements that are expected to enhance operational performance: participation in the delivery confirmation service for letter post letters, flats, and packets bearing a barcode established by the parties to the agreement; and incentive for the Postal Service to improve mail processing and transportation because of the enhanced remuneration for timely return of scans for PRIME Tracked items. *Id.*

With respect to the second criterion, the Postal Service provides several reasons why the agreement will not result in unreasonable harm to the marketplace. *Id.* at 6-7. The Postal Service and postal operators that are parties to the agreement serve as their respective countries' designated operators for the exchange of mail, specifically letter post, under the rules set by the UPU. *Id.* The Postal Service states that because no other entities are in a position to serve as designated operators for the relevant types of mail and because no other parties are subject to terminal dues rates with respect to

Inbound Letter Post, the market for the services offered under the agreement is in essence limited to its parties. *Id.* at 7.

The Postal Service states that the third criterion is inapplicable because there are no entities similarly situated to designated postal operators of the countries that are parties to the agreement in their ability to tender letter post flows specified in the PRIME Tracked Service Agreement, from the countries that are parties to the agreement, under similar operational conditions. *Id.* at 9.

Proposed exceptions to data collection and performance reporting requirements. The Postal Service states that it plans to report information on the PRIME Tracked Service Agreement, including information about mail flows, in the Annual Compliance Report (ACR). *Id.* at 8. Consequently, it proposes that no special data collection plan be created for the agreement and requests an exception from the requirement in 39 C.F.R. § 3010.43 for a special data collection plan. *Id.* In addition, because the agreement concerns the provision of a delivery confirmation service with a product that is already being measured, the Postal Service requests that the agreement be excepted from separate performance reporting under 39 C.F.R. § 3055.3(a)(3). *Id.* at 8-9.

IV. COMMENTS

The Public Representative filed comments on January 6, 2017.⁸ No other comments were received. Based on her review of the PRIME Tracked Service Agreement and supporting financial model, the Public Representative concludes that the agreement meets the requirements of 39 U.S.C. § 3622(c)(10). PR Comments at 2. However, she raises two concerns. First, the Public Representative questions the Postal Service's assertion that the PRIME Tracked Service Agreement will enhance the performance of operational functions because the agreement creates an incentive for

⁸ Public Representative Comments on Request of the United States Postal Service to Add Inbound Market Dominant PRIME Service Agreement to the Market Dominant Product List, Type 2 Rate Adjustment, January 6, 2017 (PR Comments).

the Postal Service to improve mail processing and transportation. *Id.* at 3. While she agrees with the assertion that the agreement will incentivize the Postal Service to improve mail process and transportation, the Public Representative states that the Postal Service fails to identify enhancements that are expected to result from the agreement. *Id.*

Second, the Public Representative notes that the Postal Service did not file its Request prior to accession to the PRIME Tracked Service Agreement. *Id.* She states that the agreement does allow for the parties to withdraw from the agreement; however, it takes three full calendar months for the withdrawal to take effect. *Id.* (citing Request, Attachment 2 at 3). Accordingly, the Public Representative states that the Postal Service could not withdraw from the agreement in time to avoid providing service for PRIME Tracked items. *Id.* She recommends that the Commission require the Postal Service to file a request with the Commission prior to signing any such agreement in the future. *Id.*

V. COMMISSION ANALYSIS

The Commission has reviewed the Request, the PRIME Tracked Service Agreement, supporting information, the financial analyses provided under seal, the Response to CHIR No. 1, and the Public Representative's comments.

Statutory requirements. The Commission's statutory responsibilities in this proceeding entail assigning the PRIME Tracked Service Agreement to either the market dominant product list or the competitive product list. 39 U.S.C. § 3642. As part of this responsibility, the Commission also reviews the proposal for compliance with Postal Accountability and Enhancement Act requirements. For market dominant products, this review includes an assessment of the consistency of the PRIME Tracked Service Agreement with the requirements of 39 U.S.C. § 3622(c)(10).

Product list assignment. In determining whether to assign the PRIME Tracked Service Agreement to the market dominant product list or the competitive product list,

the Commission must consider whether the Postal Service exercises sufficient market power such that it can effectively set the price substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products. 39 U.S.C. § 3642(b)(1). If so, the product will be categorized as market dominant. The competitive category of products consists of all other products.

The Commission is further required to consider the availability and nature of enterprises in the private sector engaged in the delivery of the product, the views of those who use the product, and the likely impact on small business concerns when assigning the product to a product list. 39 U.S.C. § 3642(b)(3).

The Postal Service observes that in Order No. 43, the Commission assigned all inbound shipments of single-piece Letter Post to the market dominant category and, since then, has determined that agreements similar to the PRIME Tracked Service Agreement met the criteria for inclusion on the market dominant product list. Request at 11-12. As a result, it asserts that the agreement should be added to the market dominant product list. *Id.* at 12. The Postal Service also explains there are few alternatives for sending and receiving Inbound Letter Post because the Postal Service and foreign postal operators serve as their countries' designated operators; states that foreign postal operators and their mailing customers find the mail services offered through the PRIME Tracked Service Agreement invaluable; and asserts that the agreement should not have adverse effects on small business concerns. *Id.* Attachment 1 at 5-7.

No commenter opposes the addition of the PRIME Tracked Service Agreement to the market dominant product list. The Commission finds that the very limited alternatives to Inbound Letter Post and related services mean there is little risk the Postal Service would lose a significant level of business to other firms if it raises prices significantly or above costs or decreases quality or output. This is consistent with the Commission's determination in Order No. 43 with respect to Inbound Letter Post and

subsequent decisions concerning several similar agreements. Further, there is no evidence of an adverse impact on small businesses. Therefore, the Commission will designate the PRIME Tracked Service Agreement as Inbound Market Dominant PRIME Tracked Service Agreement and will add it as a new product to the market dominant product list.

Type 2 rate adjustment. When reviewing a market dominant NSA, the Commission must determine that such an agreement meets applicable statutory requirements. Section 3622(c)(10) requires that a market dominant NSA: (1) improves the net financial position of the Postal Service or enhances the performance of operational functions; (2) will not cause unreasonable harm to the marketplace; and (3) will be available on public and reasonable terms to similarly situated mailers.

The Postal Service asserts that the agreement should improve its net financial position. Request at 1. The Postal Service also represents that the PRIME Tracked Service Agreement creates an incentive to improve mail processing and transportation, given the opportunity to be compensated for timely scans concerning inbound PRIME Tracked items. *Id.* at 6. The Postal Service asserts that the agreement will not result in unreasonable harm to the marketplace and that that the “similarly situated mailer” criterion of section 3622(c)(10) is inapplicable in this instance. *Id.* at 6-7, 9-10.

Given the Postal Service's characterization of the PRIME Tracked Service Agreement as limited to designated foreign operators, the Commission concurs with the Postal Service's assessment that there are no entities similarly situated to the designated foreign operators that are the signatories to this agreement. The Commission also finds the agreement will not cause unreasonable harm to the marketplace given the impact of the contracting parties' status as designated operators in the market.

The Commission has reviewed the data and information the Postal Service has filed concerning the financial effect of the agreement, as well as costs, volumes, and anticipated revenues. The Commission notes that the Postal Service's revised volume

estimates are an improvement over the initial estimate as they are based on actual versus projected data. Based on its review of the revised supporting financial data filed under seal, the Commission concludes that the PRIME Tracked Service Agreement should enhance the net financial position of the Postal Service in accordance with 39 U.S.C. § 3622(c)(10)(A). The Commission directs that workpapers in future filings be based on actual data, to the extent they are available.

The Public Representative states that while the PRIME Tracked Service Agreement may create an incentive for the Postal Service to improve mail processing and transportation, the Postal Service does not identify any enhancements that are expected to result from the agreement. PR Comments at 3. Section 3622(c)(10)(A) requires that a market dominant NSA either show that it will improve the Postal Service's net financial position or enhance operational functions. Because the Postal Service's supporting financial data demonstrate that the PRIME Tracked Service Agreement should improve the net financial position of the Postal Service, section 3622(a)(10)(A) has been met.

Accession prior to Commission approval. The Public Representative also expresses concern that the Postal Service did not file the Request prior to its accession to the PRIME Tracked Service Agreement. *Id.* She states that while a party can withdraw from the agreement, it takes three full calendar months for the withdrawal to take effect. *Id.* However, paragraph 2(b) of Annex 7, Participation in the PRIME Tracked Service Agreement, specifies that "USPS's acceding to this Agreement and all obligations of the USPS under this Agreement shall be contingent on the USPS receiving approvals from, and/or non-objection by...one or more internal and external bodies that have oversight responsibilities over the USPS." Request, Attachment 2 at 16. This paragraph then specifies the Commission as a body with oversight responsibility. *Id.* Therefore, the Postal Service would not be obligated to provide the PRIME Tracked service if the Commission were to find the agreement inconsistent with 39 U.S.C. § 3622.

Requests related to data collection plan and service performance reporting. The Postal Service seeks exceptions from requirements to create a separate data collection plan and to report service performance for the PRIME Tracked Service Agreement. The Postal Service states that it will report information on the agreement in the ACR. In addition, NSAs with substantially all components of the agreement included in the measurement of other products may be granted an exception from reporting pursuant to 39 C.F.R. § 3055(a)(3). The Commission finds the Postal Service's requests reasonable and grants the exceptions.

Early termination. The PRIME Tracked Service Agreement has an indefinite term, but the Postal Service has the right to withdraw, consistent with contractual provisions. Request, Attachment 2 at 3. If the Postal Service elects to withdraw from the agreement, the Postal Service shall promptly notify the Commission of the effective date of its withdrawal.

Conclusion. The Commission finds that the PRIME Tracked Service Agreement satisfies relevant statutory criteria and approves its inclusion on the market dominant product list. The Commission adds Inbound Market Dominant PRIME Tracked Service Agreement to the market dominant product list. The Commission approves the Type 2 rate adjustment filed in this proceeding.

VI. ORDERING PARAGRAPHS

It is ordered:

1. The Commission establishes Inbound Market Dominant PRIME Tracked Service Agreement as a new market dominant product, effective February 1, 2017.
2. The Commission approves, effective February 1, 2017, the Type 2 rate adjustment presented in the Request of the United States Postal Service to Add Inbound Market Dominant PRIME Tracked Service Agreement to the Market

Dominant Product List, Notice of Type 2 Rate Adjustment, and Application for Non-Public Treatment, filed December 23, 2016.

3. If the Postal Service withdraws from the PRIME Tracked Service Agreement, it shall notify the Commission as set forth in the body of this Order.
4. The Postal Service's requests that the PRIME Tracked Service Agreement be excepted from separate data collection and performance requirements under 39 C.F.R. §§ 3010.43 and 3055.3(a)(3) are granted.
5. The Secretary shall arrange for the publication in the *Federal Register* of an updated product list reflecting the change made in this Order.

By the Commission.

Stacy L. Ruble
Secretary

CHANGE IN PRODUCT LIST

The following material represents changes to the product list codified in Appendix A to 39 C.F.R. part 3020, subpart A—Market Dominant Product List. These changes reflect the Commission’s order in Docket Nos. MC2017-71 and R2017-3. The Commission uses two main conventions when making changes to the product list. New text is underlined. Deleted text is struck through.

Appendix A to Subpart A of Part 3020—Market Dominant Product List

Negotiated Service Agreements*

International*

Inbound Market Dominant PRIME Tracked Service Agreement

CHANGES TO THE MAIL CLASSIFICATION SCHEDULE

The following material represents a change to the Mail Classification Schedule. The Commission uses two main conventions when making changes to the Mail Classification Schedule. New text is underlined. Deleted text is struck through.

Part A—Market Dominant Products **1000 Market Dominant Product List**

Negotiated Service Agreements*

International*

Inbound Market Dominant PRIME Tracked Service Agreement

1600 Negotiated Service Agreements

1602 International

1602.2 Negotiated Service Agreement Groups

- Inbound Market Dominant PRIME Tracked Service Agreement (1602.6)

1602.6 Inbound Market Dominant PRIME Tracked Service Agreement

Reference

Docket No. MC2017-71 and R2017-3

PRC Order No. 3755, January 17, 2017

Expires

Ongoing
